

VZCZCXRO1084  
RR RUEHCD RUEHGD RUEHHO RUEHMC RUEHNG RUEHNL RUEHRD RUEHRS RUEHTM  
DE RUEHME #1278/01 1311356  
ZNY CCCCC ZZH  
R 111356Z MAY 09  
FM AMEMBASSY MEXICO  
TO RUEHC/SECSTATE WASHDC 6432  
INFO RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE  
RUEABND/DEA HQS WASHINGTON DC  
RHMFISS/FBI WASHINGTON DC  
RHMFISS/DEPT OF JUSTICE WASHINGTON DC  
RUEHC/DEPT OF LABOR WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHINGTON DC  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC  
RHMFISS/CDR USSOUTHCOM MIAMI FL  
RHMFISS/CDR USNORTHCOM PETERSON AFB CO  
RUEAHLA/DEPT OF HOMELAND SECURITY  
RUEABND/DEA HQS WASHINGTON DC  
RHEHAAA/NSC WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 03 MEXICO 001278

SIPDIS

E.O. 12958: DECL: 12/21/2017

TAGS: [PGOV](#) [PREL](#) [PINR](#) [MX](#)

SUBJECT: MEXICO SENATE PASSES NARCOMENUDEO LEGISLATION

REF: 08 MEXICO 3099

Classified By: Political Minister Counselor Charles V. Barclay.  
Reason: 1.4 (b), (d).

#### Summary

-----

¶1. (C) On April 29 and 30, both chambers of the Mexican Congress passed reforms to penal code procedures for sanctioning street sales of illegal drugs ("narcomenudeo"). The legislation passed by wide margins (with considerable support from PAN legislators) and little public commentary or opposition. Congressional contacts and PGR officials we have spoken with say they expect President Calderon to sign the legislation within days. While much of the bill relates to treatment and prevention of drug abuse (mandating better analysis of the scope of drug use in Mexico, public education campaigns and the expansion of prevention/treatment programs) key elements define the division of labor between federal, state and local law enforcement and ease the regime for dealing with petty drug users. The version of the legislation passed last week provides no mandatory action against individuals found to be in possession of illegal drugs below certain threshold limits until their third offense. Like the earlier legislation, however, the bill significantly strengthens options that federal, state and local law enforcement officials have to investigate and prosecute street trafficking.

#### Threshold limits

-----

¶2. (SBU) Opium - 2 gr,  
Heroin - 50 mg,  
Marijuana - 5 gr, (October draft imposed a 2 gr. threshold.)  
Cocaine - 500 mg,  
LSD - .015 mg,  
MDA(powder or crystal) - 40 mg,  
MDA(tablets or capsules) - 200 mg,  
MDMA(powder or crystal) - 40 mg,  
MDMA(tablets or capsules) - 200 mg,  
Methamphetamine (powder or crystal) - 40 mg,  
Methamphetamine (tablets or capsules) 200 mg

¶3. (SBU) The new law clearly defines the distinction between consumers, drug dependency and trafficking. According to the draft passed last week, a consumer is an individual who uses

drugs "without presenting symptoms of dependency through "cognitive or physical behavior resulting from the repeated use of psychotropic or narcotic drugs." Possession is defined as holding an illegal drug on one's person or within "range of personal control" (such as an automobile)." Trafficking is defined as the sale, transfer, or purchase of an illegal drug.

14. (SBU) The bill also defines jurisdiction over the illegal possession and sale of the above substances, strengthening state and local authorities responsibility to investigate and prosecute such criminal activity. While federal authorities retain jurisdiction over cases involving organized crime, or those involving amounts 1000 times or more greater than the amounts established above, and may request information and/or jurisdiction over any drug case, states and local entities are now squarely responsible to move forward on cases in their jurisdiction. The legislation mandates prompt information-sharing and full cooperation among authorities at all levels.

#### Consequences of Possession and/or Sale

-----

15. (SBU) The law stipulates two different categories of punishable possession. First, for quantities at threshold limit multiplied by 1000 the possession is prosecuted by the federal authorities. A range of mandatory penalties are imposed depending on the circumstances surrounding the possession, sale or intent to sell. Prison sentences of three to fifteen years and heavy fines are required for possession

MEXICO 00001278 002 OF 003

or sale of such quantities. Furthermore, penalties will be increased in cases involving public officials entrusted with law enforcement or public health responsibilities and in cases where the infraction took place in or near a school, law enforcement facility or jail. (The law also provides for reduced sentence for minors and individuals with diminished mental capacities.)

16. (SBU) Secondly, if the quantities are greater than the threshold limits but do not meet the amount regarded as a federal offense, the States have the responsibility to prosecute unless it is determined that organized crime is involved. Each state has its individual penal code and sentencing guidelines for drug possession crimes. The State Attorney General uses the state penal code and sentencing guidelines to propose punishment to the state judiciary who ultimately mandates the sentence for possession crimes. State are instructed by the legislation to ensure their penal codes are in conformity with the new legislation.

#### Possession of Amounts Below Threshold

-----

17. (SBU) Below the threshold, law enforcement authorities are charged with taking the case to a public prosecutor, who must notify appropriate public health authorities of the particulars of the case. The first two instances in which an individual is found to be in possession of an illegal drug, the public prosecutor and public health authorities can offer a treatment option to the individual (who also may opt for treatment). If either makes a determination at any point that the individual demonstrates signs of drug dependency they can remand him to a public or private treatment program. On the third occasion, treatment is mandatory. The new law will provide for an information exchange between law enforcement and public health officials to track individual transgressions and provide for a statistical basis to track the scope of drug consumption throughout Mexico.

#### New Authorities for Police

-----

18. (SBU) Also for the first time, police are given authority to solicit and purchase drugs from individuals in the course of drug investigations. This new authority is given to all federal, state, and local police officials and is designed to considerably strengthens their ability to prosecute drug sales. Drugs acquired through sting operations will be admissible as evidence in courts of law.

#### Next Steps

19. (C) The legislation passed in both the Senate and Chamber with a strong PAN support and no objection from either the Public Security Secretariat or Attorney Generals office. Congressional and law enforcement contacts we spoke to expect the president will sign the legislation into law quickly. The president normally has ten working days to do so, or the bill automatically becomes law. Since Mexico officially shut down between May 1 and May 5, the clock started ticking on Wednesday, May 6, and Calderon has until May 19, says one congressional staffer. However, if Calderon wishes to make modifications to the legislation and send it back to Congress, he will have ten days from the start of the next session in September (since the current Congress terminated on April 30). Once signed into law by the President, individual states will have to make adjustments to their own penal codes to bring them into conformity with the new federal statute.

#### Comment

110. (C) Electoral politics are likely to play into the equation, say our contacts. President Calderon may want to dispatch this bill by signing it quickly to score a legal reform victory for his team. The bill has much in the way of

MEXICO 00001278 003 OF 003

education and public service elements that will appeal to the Mexican public's desire for a socially oriented approach to fighting crime and violence in Mexico. We believe he will also sign quickly to prevent the question of whether the bill "de-criminalizes" possession and use of drugs from becoming a campaign issue in the run up to July 5 mid-term elections -- particularly if he believes he will be publicly pushed into a corner by critics from abroad. Federal law enforcement elements here accept that the new regimen for consumers of drugs goes a bit further toward de-criminalization than the earlier bill had, but that the mandated interface between law enforcement and health officials at all stages of an individual's case, forces consumers of illegal drugs to deal with the consequences of their behavior. Most positively, they say, the new law provides the clarity needed with regards to defining what constitutes the illegal sale of drugs, and forces state and local jurisdictions to deal with the reality of soaring street sales and usage in Mexico. Of course, like all such initiatives, effective implementation will still very much depend on strengthening Mexico's currently weak law enforcement and judicial systems. End Comment.

Visit Mexico City's Classified Web Site at <http://www.state.sgov.gov/p/wha/mexicocity> and the North American Partnership Blog at <http://www.intelink.gov/communities/state/nap/> / BASSETT